

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session,
and Chapter 1118, Statutes of 1987

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

November 2008



JOHN CHIANG
California State Controller

November 14, 2008

Rob Rader, Chair
Board of Trustees
Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, CA 90405

Dear Mr. Rader:

The State Controller's Office audited the costs claimed by the Santa Monica Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2003, through June 30, 2006.

The district claimed \$1,104,368 (\$1,115,368 less an \$11,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$308,426 is allowable and \$795,942 is unallowable. The costs are unallowable because the district claimed ineligible costs and understated revenues. The State made no payment to the district. The State will pay allowable costs claimed that exceed the amount paid, totaling \$308,426, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Chui L. Tsang, Ph.D., Superintendent/President
Santa Monica Community College District
Christopher Bonvenuto, Director of Fiscal Services
Santa Monica Community College District
Kuldeep Kaur, Specialist
Fiscal Planning and Administration
California Community Colleges Chancellor's Office
Jeannie Oropeza, Program Budget Manager
Education Systems Unit
Department of Finance

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the Santa Monica Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2003, through June 30, 2006.

The district claimed \$1,104,368 (\$1,115,368 less an \$11,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$308,426 is allowable and \$795,942 is unallowable. The costs are unallowable because the district claimed ineligible costs and understated revenues. The State made no payment to the district. The State will pay allowable costs claimed that exceed the amount paid, totaling \$308,426, contingent upon available appropriations.

Background

Chapter 1, Statutes 1984, 2nd Extraordinary Session repealed Education Code section 72246 which authorized community college districts to charge a health fee for providing health supervision and services, providing medical and hospitalization services, and operating student health centers. This statute also required that health services for which a community college district charged a fee during fiscal year (FY) 1983-84 had to be maintained at that level in FY 1984-85 and every year thereafter. The provisions of this statute would automatically sunset on December 31, 1987, reinstating the community college districts' authority to charge a health service fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 (subsequently renumbered as Section 76355 by Chapter 8, Statutes of 1993). The law requires any community college district that provided health services in FY 1986-87 to maintain health services at the level provided during that year in FY 1987-88 and each fiscal year thereafter.

On November 20, 1986, the Commission on State Mandates (CSM) determined that Chapter 1, Statutes of 1984, 2nd Extraordinary Session imposed a "new program" upon community college districts by requiring specified community college districts that provided health services in FY 1983-84 to maintain health services at the level provided during that year in FY 1984-85 and each fiscal year thereafter. This maintenance-of-effort requirement applied to all community college districts that levied a health service fee in FY 1983-84.

On April 27, 1989, the CSM determined that Chapter 1118, Statutes of 1987, amended this maintenance-of-effort requirement to apply to all community college districts that provided health services in FY 1986-87, requiring them to maintain that level of services in FY 1987-88 and each fiscal year thereafter.

The parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on August 27, 1987 and amended them on May 25, 1989. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs to assist local agencies and school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the district's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures as recommended by generally accepted government auditing standards. However, the district declined our request.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the Santa Monica Community College District claimed \$1,104,368 (\$1,115,368 less an \$11,000 penalty for filing late claims) for costs of the Health Fee Elimination Program. Our audit disclosed that \$308,426 is allowable and \$795,942 is unallowable.

The State made no payment to the district. Our audit disclosed that \$308,426 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$308,426, contingent upon available appropriations.

**Views of
Responsible
Official**

We issued a draft audit report on September 30, 2008. Chris Bonvenuto, Director of Fiscal Services, responded by letter dated October 7, 2008 (Attachment), disagreeing with the audit results. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of the Santa Monica Community College District, the California Community Colleges Chancellor's Office, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

November 14, 2008

Schedule 1— Summary of Program Costs July 1, 2003, through June 30, 2006

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 756,771	\$ 756,771	\$ —	
Services and supplies	4,500	4,500	—	
Total direct costs	761,271	761,271	—	
Indirect costs	259,365	145,707	(113,658)	Finding 1
Total direct and indirect costs	1,020,636	906,978	(113,658)	
Less authorized health fees	(598,538)	(712,713)	(114,175)	Finding 2
Subtotal	422,098	194,265	(227,833)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	\$ 421,098	193,265	\$ (227,833)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 193,265		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 698,777	\$ 698,777	\$ —	
Services and supplies	15,490	15,490	—	
Total direct costs	714,267	714,267	—	
Indirect costs	263,636	229,351	(34,285)	Finding 1
Total direct and indirect costs	977,903	943,618	(34,285)	
Less authorized health fees	(572,944)	(828,457)	(255,513)	Finding 2
Total program costs	\$ 404,959	115,161	\$ (289,798)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 115,161		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 668,464	\$ 668,464	\$ —	
Services and supplies	10,072	10,072	—	
Total direct costs	678,536	628,536	—	
Indirect costs	232,399	226,835	(5,564)	Finding 1
Total direct and indirect costs	910,935	905,371	(5,564)	
Less authorized health fees	(622,624)	(1,014,592)	(391,968)	Finding 2
Subtotal	288,311	(109,221)	(397,532)	
Less late filing penalty	(10,000)	(10,000)	—	
Adjustment to eliminate negative balance	—	119,221	119,221	
Total program costs	\$ 278,311	—	\$ (278,311)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ —		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2003, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 2,124,012	\$ 2,124,012	\$ —	
Services and supplies	30,062	30,062	—	
Total direct costs	2,154,074	2,154,074	—	
Indirect costs	755,400	601,893	(153,507)	
Total direct and indirect costs	2,909,474	2,755,967	(153,507)	
Less authorized health fees	(1,794,106)	(2,555,762)	(761,656)	
Subtotal	1,115,368	200,205	(915,163)	
Less late filing penalty	(11,000)	(11,000)	—	
Adjustment to eliminate negative balance	—	119,221	119,221	
Total program costs	<u>\$ 1,104,368</u>	308,426	<u>\$ (795,942)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 308,426</u>		

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Overstated indirect cost rates

The district overstated its indirect cost rates, and thus overstated its indirect costs by \$153,507 for the audit period.

For the audit period, the district prepared its indirect cost rate proposals (ICRPs) in accordance with Office of Management and Budget (OMB) Circular A-21. However, the district used expenditures from the prior year's California Community Colleges Chancellor's Office (CCCCO) Annual Financial and Budget Report, Form CCFS-311, to prepare the current year's indirect costs rates in each of the three fiscal years, and did not obtain federal approval for these ICRPs.

The program's parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The SCO's claiming instructions state that districts must obtain federal approval for an ICRP prepared in accordance with OMB Circular A-21. Alternatively, the district may compute an indirect cost rate using the Form FAM-29C, which is based on total current fiscal year expenditures that the district reports in the CCFS-311.

For each fiscal year, we calculated allowable indirect cost rates based on the FAM-29C alternative methodology that the claiming instructions allow. The following table summarizes the audit adjustment based on the allowable direct costs claimed and allowable indirect cost rates:

	Fiscal Year		
	2003-04	2004-05	2005-06
Allowable indirect cost rate	19.14%	32.11%	33.43%
Less claimed indirect cost rate	(34.07)%	(36.91)%	(34.25)%
Unsupported indirect cost rate	<u>(14.93)%</u>	<u>(4.80)%</u>	<u>(0.82)%</u>

Based on these unsupported indirect cost rates, the audit adjustments are summarized below:

	Fiscal Year			
	2003-04	2004-05	2005-06	Total
Claimed direct costs	\$ 761,271	\$ 714,267	\$ 678,536	
Unsupported indirect cost rate	×(14.93)%	× (4.80)%	× (0.82)%	
Audit adjustment	<u>\$ (113,658)</u>	<u>\$ (34,285)</u>	<u>\$ (5,564)</u>	<u>\$ (153,507)</u>

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates calculated according to the SCO's claiming instructions. The district must obtain federal approval when it prepares its ICRP according to OMB Circular A-21. Alternatively, the district must prepare its ICRP using the SCO's methodology identified in the claiming instructions.

District's Response

The State Controller's Office draft audit report determined that the District overstated indirect costs by \$153,507 for the audit period because the rate prepared in accordance with Office of Management and Budget Circular A-21 (OMB A-21) was not federally approved as required by SCO claiming instructions. It insists that any indirect cost rate not derived from one of the three methods described in the SCO claiming instructions must be excessive or incorrect, regardless of the reasonableness of the rate used. This contention is based on Section VI, Subsection B, of the Parameters and Guidelines, which states that "[i]ndirect costs may be claimed in the manner described by the State Controller in his claiming instructions."

The parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller in the draft audit report. This interpretation of the phrase "may be claimed" would, in essence, subject claimants to underground rulemaking at the direction of the Commission. The SCO claiming instructions are unilaterally created and modified without public notice or comment. Therefore, they are not laws or regulations, and are not enforceable. In fact, until 2005, the SCO regularly included a "forward" in its Mandated Cost Manual for Community Colleges that explicitly stated the claiming instructions were "issued for the sole purpose of assisting claimants" and "should not be construed in any manner to be statutes, regulations, or standards."

The draft audit report unilaterally applies the FAM-29C method specified in the SCO claiming instructions, which results in an "allowable" indirect cost rate that ranges from 19.14% to 33.43% over the three audit years. This is in comparison to the relatively consistent indirect cost rate prepared by the District in accordance with OMB A-21, which ranges from 34.07% to 36.91%. There is nothing to indicate that the District's indirect cost rate is anything other than reasonable, except the unenforceable preferences of the State Controller. If the SCO wishes to require indirect costs to be claimed only as specified in its claiming instructions, then it must comply with the Administrative Procedures Act.

Since the Controller has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

SCO's Comment

The parameters and guidelines (section VI) state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district interprets "may be claimed" as compliance with the claiming instructions is voluntary. Instead, "may be claimed" permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the district must comply with the SCO's claiming instructions. The district's implication that it claimed costs in the manner described by the SCO by completing what it interprets to be the correct forms is without merit.

The SCO's claiming instructions state, "A college has the option of using a federally approved rate, utilizing the cost accounting principles from OMB Circular A-21 'Cost Principles for Educational Institutions,' or the Controller's methodology outlined in the following paragraphs [FAM-29C]. . . ." This instruction is consistent with parameters and guidelines for other community college district mandated programs, including the following:

- Absentee Ballots
- Collective Bargaining
- Health Benefits for Survivors of Peace Officers and Firefighters
- Law Enforcement College Jurisdiction Agreements
- Mandate Reimbursement Process
- Open Meetings Act
- Photographic Record of Evidence
- Sex Offenders Disclosure by Law Enforcement Officers
- Sexual Assault Response Procedure

In addition, neither this district nor any other district requested that the Commission review the SCO's claiming instructions pursuant to Title 2, California Code of Regulations (CCR), Section 1186. Furthermore, the district may not now request a review of the claiming instructions applicable to the audit period. Title 2 CCR Section 1186, subdivision (j)(2), states, "A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines is excessive or unreasonable. In addition, Government Code section 12410 states, "The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's implication that the SCO is authorized to reduce a claim only if it determines the claim to be excessive or unreasonable is without merit.

Nevertheless, the SCO did report that the district's claimed indirect costs were excessive. "Excessive" is defined as "exceeding what is usual, proper, necessary, or normal. . . . Excessive implies an amount or degree too great to be reasonable or acceptable. . . ."¹ The district used expenditures from the prior year's CCFS-311 to prepare the current year's indirect cost rates in each of the three fiscal years, and did not obtain federal approvals of its ICRPs for FY 2003-04, FY 2004-05, and FY 2005-06. Therefore, the SCO auditor calculated indirect costs using the methodology described in the SCO claiming instructions using Form FAM-29C. The alternative methodology indirect cost rates did not support the rates that the district claimed; thus, the rates claimed were excessive.

¹ Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

**FINDING 2—
Understated authorized
health service fees**

The district understated its reported authorized health service fees by \$761,656 during the audit period. It reported actual health service fee revenue that it collected rather than authorized health service fees.

Mandated costs do not include costs that are reimbursable from authorized fees. Government Code section 17514 states that “costs mandated by the state” means any increased costs that a school district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

For the audit period until December 31, 2005, Education Code section 76355, subdivision (c), states that health fees are authorized for all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need. Effective January 1, 2006, Education Code section 76355, subdivision (c) no longer excludes students who have a financial need. The CCCCCO identified the fees authorized by Education Code section 76355, subdivision (a). For FY 2003-04, the authorized fees are \$12 per semester, \$9 per summer session, and \$9 per intersession of at least four weeks, or \$9 per quarter. For FY 2004-05, the authorized fees are \$13 per semester, \$10 per summer session, and \$10 per intersession of at least four weeks, or \$10 per quarter. For FY 2005-06, the authorized fees are \$14 per semester, \$11 per summer session, and \$11 per intersession of at least four weeks, or \$11 per quarter.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO. The CCCCCO data is based on student data that the district reported. We calculated total authorized health service fees using the authorized health service fee rates that the CCCCCO identified.

The following table shows the authorized health service fees and audit adjustment:

	Summer	Fall	Winter	Spring	Total
<u>FY 2003-04</u>					
Student enrollment	18,142	26,025	13,587	25,660	
BOGG recipients	(3,013)	(5,664)	(3,215)	(5,754)	
Students subject to health service fee	15,129	20,361	10,372	19,906	
Authorized health service fee rate	× \$ (9)	× \$ (12)	× \$ (9)	× \$ (12)	
Authorized health service fee	<u>\$ (136,161)</u>	<u>\$ (244,332)</u>	<u>\$ (93,348)</u>	<u>\$ (238,872)</u>	\$ (712,713)
Less authorized health service fee claimed					<u>598,538</u>
Audit adjustment, FY 2003-04					<u>(114,175)</u>

	<u>Summer</u>	<u>Fall</u>	<u>Winter</u>	<u>Spring</u>	<u>Total</u>
<u>FY 2004-05</u>					
Student enrollment	17,213	30,105	13,759	29,502	
BOGG recipients	<u>(3,161)</u>	<u>(7,232)</u>	<u>(3,854)</u>	<u>(7,076)</u>	
Students subject to health service fee	14,052	22,873	9,905	22,426	
Authorized health service fee rate	<u>× \$ (10)</u>	<u>× \$ (13)</u>	<u>× \$ (10)</u>	<u>× \$ (13)</u>	
Authorized health service fee	<u>\$ (140,520)</u>	<u>\$ (297,349)</u>	<u>\$ (99,050)</u>	<u>\$ (291,538)</u>	(828,457)
Less authorized health service fee claimed					<u>572,944</u>
Audit adjustment, FY 2004-05					<u>(255,513)</u>
<u>FY 2005-06</u>					
Student enrollment	17,219	31,798	14,029	30,297	
BOGG recipients	<u>(3,739)</u>	<u>(8,134)</u>	<u>(3,951)</u>	<u>—</u>	
Students subject to health service fee	13,480	23,664	10,078	30,297	
Authorized health service fee rate	<u>× \$ (11)</u>	<u>× \$ (14)</u>	<u>× \$ (11)</u>	<u>× \$ (14)</u>	
Authorized health service fee	<u>\$ (148,280)</u>	<u>\$ (331,296)</u>	<u>\$ (110,858)</u>	<u>\$ (424,158)</u>	(1,014,592)
Less authorized health service fee claimed					<u>622,624</u>
Audit adjustment, FY 2005-06					<u>(391,968)</u>
Total audit adjustment					<u>\$ (761,656)</u>

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed and maintain records that support its calculation of authorized health service fees. These records should identify the actual non-duplicated student enrollment and students who are exempt from health service fees under Education Code section 76355, subdivision (c).

District's Response

The draft audit report determined that revenue offsets were understated by \$761,656 for the audit period. This adjustment is due to the fact that the District "reported actual health services fee revenue that it collected rather than authorized health service fees." The Controller instead calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable, rather than the fee actually charged to the student or the fees actually collected.

"Authorized" Fee Amount

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The Controller does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that “The governing board of a district maintaining a community college may require community college students to pay a fee...for health supervision and services. . . .” “There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states “If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.” (Emphasis supplied in both instances)

Government Code Section 17514

The Controller relies upon Government Code Section 17514 for the conclusions that “[t]o the extent community college districts can charge a fee, they are not required to incur a cost.” First, charging a fee has no relationship to whether costs are incurred to provide the students health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language which describes the legal effect of fees collected.

Government Code Section 17556

The Controller relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of services.” Government Code Section 17556 as last amended by Statutes of 2006, Chapter 538, actually states:

“The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds only one of the following: . . .

- (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of services.”

Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

SCO's Comment

We agree that community college districts may choose not to levy a health service fee. However, Education Code section 76355, subdivision (a), provides districts the authority to levy a health service fee. Education Code section 76355, subdivision (c), specifies the authorized fees.

Regardless of the district's decision to levy or not levy a health service fee, the district does have the authority to levy the fees. In addition, the SCO made no distinction between full-time or part-time students regarding the authorized health service fee. Districts are authorized to levy the full fee amount to both part-time and full-time students. Government Code section 17514 states that "costs mandated by the state" means any increased costs that a school district is required to incur. Furthermore, Government Code section 17556, subdivision (d), states that the CSM shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service. For the mandated Health Fee Elimination Program, the CSM clearly recognized the availability of another funding source by including the fees as offsetting savings in the parameters and guidelines (section VIII, amended May 25, 1989). To the extent districts have authority to charge a fee, they are not required to incur a cost.

The district misrepresents the CSM's determination regarding authorized health service fees. The CSM's staff analysis of May 25, 1989, regarding the proposed parameters and guidelines amendments, states:

Staff amended "Item VIII. Offsetting Savings and Other Reimbursements" to reflect the reinstatement of [the] fee authority.

In response to that amendment, the [Department of Finance (DOF)] has proposed the addition of the following language to Item VIII to clarify the impact of the fee authority on claimants' reimbursable costs:

"If a claimant does not levy the fee authorized by Education Code section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied."

Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII.

Thus, it is clear that the CSM's intent was that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included a letter from the CCCCCO, dated April 3, 1989. In that letter, the CCCCCO concurred with the DOF and the CSM regarding authorized health service fees.

Since the CSM's staff concluded that DOF's proposed language did not substantively change the scope of staff's proposed language, CSM staff did not further revise the proposed parameters and guidelines. The CSM's meeting minutes of May 25, 1989, show that it adopted the

proposed parameters and guidelines on consent, with no additional discussion. Therefore, there was no change to the CSM's interpretation regarding authorized health service fees.

Two court cases addressed the issue of fee authority². Both cases concluded that "costs" as used in the constitutional provision, exclude "expenses that are recoverable from sources other than taxes." In both cases, the source other than taxes was fee authority.

The SCO obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO. The CCCCCO data is based on student data that the district reported at the end of each term. We calculated total authorized health service fee using the authorized health services fee rates that the CCCCCO identified. In conclusion, the finding stands.

² County of Fresno v. California (1991) 53 Cal. 3d 482; Connell v. Santa Margarita (1997) 59 Cal. App. 4th 382.

**Attachment—
District's Response to
Draft Audit Report**



October 07, 2008

Mr. Jim L. Spano, Chief
Mandated Cost Audits Bureau
California State Controller
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
Fiscal Years: 2003-04, 2004-05, and 2005-06

Dear Mr. Spano:

This letter is the response of the Santa Monica Community College District to the letter from Jeffrey V. Brownfield, Chief, Division of Audits, dated September 30, 2008, received by the District on October 2, 2008, which enclosed a draft copy of the State Controller's Office audit report of the District's Health Fee Elimination claims for the period of July 1, 2003, through June 30, 2006.

Finding 1 - Overstated Indirect Cost Rates

The State Controller's Office draft audit report determined that the District overstated indirect costs by \$153,507 for the audit period because the rate prepared in accordance with Office of Management and Budget Circular A-21 (OMB A-21) was not federally approved as required by SCO claiming instructions. It insists that any indirect cost rate not derived from one of the three methods described in the SCO claiming instructions must be excessive or incorrect, regardless of the reasonableness of the rate used. This contention is based on Section VI, Subsection B, of the Parameters and Guidelines, which states that "[i]ndirect costs may be claimed in the manner described by the State Controller in his claiming instructions."

The parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller in the draft audit report. This interpretation of the phrase "may be claimed" would, in essence, subject claimants to underground rulemaking at the direction of the Commission. The SCO claiming instructions are unilaterally created and modified without public notice or comment. Therefore, they are not laws or regulations, and are not enforceable. In fact, until 2005, the SCO regularly included a "forward" in its Mandated Cost Manual for Community Colleges that explicitly stated the claiming instructions were "issued for the sole purpose of assisting claimants" and "should not be construed in any manner to be statutes, regulations, or standards."

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Dr. Chui L. Tsang, Superintendent and President

The draft audit report unilaterally applies the FAM-29C method specified in the SCO claiming instructions, which results in an "allowable" indirect cost rate that ranges from 19.14% to 33.43% over the three audit years. This is in comparison to the relatively consistent indirect cost rate prepared by the District in accordance with OMB A-21, which ranges from 34.07% to 36.91%. There is nothing to indicate that the District's indirect cost rate is anything other than reasonable, except the unenforceable preferences of the State Controller. If the SCO wishes to require indirect costs to be claimed only as specified in its claiming instructions, then it must comply with the Administrative Procedures Act.

Since the Controller has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

Finding 2 - Understated Authorized Health Fee Revenues Claimed

The draft audit report determined that revenue offsets were understated by \$761,656 for the audit period. This adjustment is due to the fact that the District "reported actual health services fee revenue that it collected rather than authorized health service fees." The Controller instead calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable, rather than the fee actually charged to the student or the fees actually collected.

"Authorized" Fee Amount

The Controller alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The Controller does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "The governing board of a district maintaining a community college may require community college students to pay a fee . . . for health supervision and services . . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states "If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional." (Emphasis supplied in both instances)

Government Code Section 17514

The Controller relies upon Government Code Section 17514 for the conclusion that "[t]o the extent community college districts can charge a fee, they are not required to incur a cost." First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language which describes the legal effect of fees collected.

Government Code Section 17556

The Controller relies upon Government Code Section 17556 for the conclusion that "the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service." Government Code Section 17556 as last amended by Statutes of 2006, Chapter 538, actually states:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a school district or a school district, if the school district has the authority to levy fees or assessments sufficient to pay for the mandated program or increased level of service."

Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

The District requests that the audit report be changed to comply with the appropriate application of the Government Code concerning audits of mandate claims.

Sincerely,



Chris Bonvenuto, Director of Fiscal Services
Santa Monica Community College District

Cc: Keith Peterson, SixTen & Associates

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